

**Town of Bethany Beach
Planning Commission Minutes
September 17, 2011**

The Bethany Beach Planning Commission held a meeting on Saturday, September 17, 2011 at 9:00 a.m. in the Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, DE 19930.

The following members were present: Lew Killmer, who presided; John Gaughan; Faith Denault; Chuck Peterson; and Fulton Loppatto.

Excused member: Mike Boswell

Also present: Susan Frederick, Building Inspector; Lindsey Good, Administrative Secretary; and interested members of the public.

OPENING OF MEETING

Approval of Agenda

Ms. Denault made a motion to approve the agenda. Mr. Gaughan seconded the motion and it was unanimously approved.

Discussion/Approval of the Planning Commission Minutes of August 08, 2011

Mr. Gaughan made a motion to approve the minutes dated August 08, 2011. Seconded by Ms. Denault, the motion was unanimously approved.

Announcements/Comments/Updates

Non-Residential Design Review Update (Killmer/Denault)

There was no meeting so there was no report.

Comments, Q&A and Discussion for Planning Commissioner Members (All)

There were no comments at this time.

PUBLIC COMMENT/QUESTIONS FOR THE PLANNING COMMISSION

There were no comments for the Planning Commissioners members at this time.

NEW BUSINESS

Consider amending the section of the Town Code regarding Fences (425-16B) as well as adding the definition of a fence to section 425-2 of the Town Code. (Killmer)

Mr. Killmer explained that a few residents have questioned the requirements of fences outlined in the Town Code. He presented a document explaining why the Town regulates fences. The document reads as follows

The Town of Bethany Beach regulates fences to protect the property owner, neighbors, and other residents of the Town. Regulating fences also protects the public's interest and property values. The reasons the Town regulates fences are described below:

- ***Fences can be hazardous.*** *Fences can obstruct the vision of motorists and pedestrians at street intersections and driveways. Solid fences of more than two feet (2') in height can be particularly dangerous, as they may block the view of small children. Sometimes the fence material is dangerous. Without fencing regulations, barbed wire and electrified fences would be allowed and could cause injury. Many of the Town's Ordinance regulations are to improve safety.*
- ***Fences can change the feel and appearance of a neighborhood.*** *Fences higher than four feet (4') in the front yard of a single-family residential lot can create a fortress appearance. When fence heights vary substantially from one residential lot of another, the appearance and the character of the neighborhood can be adversely affected.*
- ***Fences affect property values.*** *Many people install fences to enhance the appearance of their property, which may, in turn, affect their property values. When a fence is installed improperly and/or not properly maintained, neighbors believe it is a nuisance, similar to overgrown weeds and litter and also believe it will adversely affect their property value.*
- ***Fences can block or obstruct light and restrict airflow.*** *Just as the construction of a garage too close to a house can disrupt the surrounding environment, so can an improperly placed high fence.*

The current wording of Section 425-16 (B) of the Code is as follows:
425-16. Fences.

B. A fence erected on any property located within any residential zoning district which is contiguous to another property located within any residential zoning district shall not exceed four feet in height measured from the grade of the lot to the topmost point of the fence, and shall comply with this chapter.

The suggested alternative wording produced by Mr. Killmer for Section 425-16 of the Code is as follows:

425-16. Fences.

B. A fence erected on any property located within any residential zoning district, which is contiguous to another property located within any residential zoning district, shall not exceed four feet in height regardless of the actual physical location of the fence on the property. The height of the fence is measured from the grade of the lot to the topmost point of the fence, and shall comply with this chapter.

Mr. Killmer also proposed that the following definition of a fence be added to the Zoning Code (425-2):

FENCE - An artificially constructed barrier enclosing, separating, or screening areas of

land, serving as a boundary, a means of protection, a buffer, a decorative element, a means of visually modifying the view, and/or for confinement.

Mr. Loppatto expressed that he feels that Section 425-16 of the Code is currently unclear and he agreed that a fence needs to be defined. He added that this is a complicated issue. Mr. Gaughan commented that he is also in favor of producing a definition of a fence. The Commission ensued a discussion on what should be the appropriate height regulation for fences and agreed that a clearer definition needs to be stated in the Code. Mr. Killmer stated that he would create a drafted ordinance that will include which types of fences should not be permitted.

Consider amending section 530-28 (Existing Non-Conforming Signs) of the Bethany Beach Sign Ordinance regarding signage on Non-Conforming Use Properties. (Killmer)

Mr. Killmer explained that there were a number of residents that were concerned about signs that were being installed in their community especially on legal non-conforming properties. Therefore, he drafted a proposed amendment to the recently passed Sign Ordinance that directly deals with legal non-conforming signs. Mr. Killmer reviewed the State of Delaware's ordinances regarding legal non-conforming signs and as well as ordinances from other states in which the proposed amendment to the Bethany Beach Sign Ordinance is based.

The Town's current Sign Code to Non-Conforming Signs is as follows:

530-28. Existing Nonconforming Signs – Abatement

Signs that lawfully existed and were maintained as nonconforming signs prior to the effective date of this chapter shall be removed unless, within one (1) year of the effective date of this chapter, said signs are brought into compliance with this chapter or are granted a variance or special exception.

The drafted Non-Conforming Sign Amendment is as follows:

Non-Conforming And Discontinued Signs:

Signs For A Legal Non-Conforming Use

- If at the time of the adoption of the Bethany Beach Sign Ordinance, any signs that are being used in a manner or for a purpose that was otherwise lawful, but does not conform to the provisions of the Bethany Beach Sign Ordinance, shall be considered to be Non-Conforming Legal Signs.*
- Such signs may continue only in the manner and to the extent that it existed at the time of the adoption, amendment or extension of the Bethany Beach Sign Ordinance.*
- New or replacement signs for a non-conforming use shall be permitted with the*

following restrictions:

- 1. The non-conforming sign may not be expanded or modified in any way that increases the sign's non-conformity nor may any illumination be added;*
- 2. It must remain structurally unchanged except for repairs and alterations;*
- 3. The non-conforming sign if replaced must be located in the same relative position on the property;*
- 4. The design and the color scheme shall blend in as much as possible with the zoning district in which the non-conforming sign is located;*
- 5. Nor can it be reestablished once the sign structure has been removed.*

Sign Condition Requirements

- All legal non-conforming signs shall be subject to all requirements of the Bethany Beach Sign Ordinance regarding safety, maintenance and repair. Non-conforming legal signs shall be maintained in good condition including non-structural repairs and incidental alterations or copy alterations, such as repainting, which do not extend or intensify the non-conforming features of the sign.*
- In the event legal non-conforming signs are not in above said condition or are demolished and/or destroyed by any force whatsoever to the extent of fifty percent (50%) or more of the fair market value of the sign structure, such legal non-conforming signs shall then be made to conform to the Bethany Beach Sign Ordinance for the zoning district in which the sign is located. The fair market value shall be determined by the Building Inspector or his/her designee as to the depreciated replacement value of the sign.*

Discontinuance of Certain Legal Non-Conforming Signs:

- A legal non-conforming sign for a non-conforming use that is discontinued for a period exceeding twelve (12) months, or is superseded by a conforming use shall be considered a prohibited sign and shall be removed or brought into conformance upon establishment of a conforming use.*

Property owner, Mr. Jerry Morris, questioned if variances are issued to the property or the applicant. Mr. Killmer replied that the variance is granted to the property and not to the property owner.

Mr. Killmer opened up the discussion to any comments or questions from the Commissioners at this time.

Referring to the last sentence in Section (B) (2) of the drafted Non-Conforming Sign Amendment, Ms. Denault questioned what determines it to be qualified.

Mr. Killmer explained that the Building Inspector would determine whether the designee is qualified. Mr. Killmer asked the Commissioners to provide any recommended changes to the drafted amendment at this time. Ms. Frederick advised that an assessment should be given by a professional, to be sure that signs that are not in good condition or are

demolished and/or destroyed by any force whatsoever do not exceed fifty percent (50%) of the fair market value of the sign structure. Ms. Denault recommended that Ms. Frederick's suggestion should be included in the ordinance.

Mr. Gaughan suggested that the sentence in section (A)(3)(3) be changed to the following:

The non-conforming sign if replaced must be located in the same ~~relative~~ position on the property. Mr. Gaughan also suggested the following amendment to the last sentence of section (B)(2):

The fair market value shall be ~~determined-certified~~ by the Building Inspector or his/her designee as to the depreciated replacement value of the sign. Mr. Peterson noted that if the suggested changes were not made, there would be more issues. Mr. Killmer stated that he would make the suggested changes to the drafted Non-Conforming Sign Amendment and schedule it as an agenda item on a future Town Council Workshop. Mr. Morris commented that the Planning Commission is doing a very good job. Ms. Denault thanked Mr. Killmer for taking the time to draft the Sign Ordinance amendment.

OLD BUSINESS

Continue the discussion about the benefits and potential negative impact(s) of possibly incorporating Floor Area Ratio (FAR) requirements in the Town's Zoning Code. (Loppatto)

Mr. Loppatto explained that the purpose of including FAR limits is to harmonize a community by not increasing density of homes and the use of natural resources, and to maintain and not decrease green space. Mr. Loppatto noted that when he drafted the suggestions for a proposed ordinance amendment on Floor Area Ratio, he focused on the FAR ordinances in surrounding coastal towns as examples: City of Rehoboth, South Bethany, Dewey Beach, and Fenwick Island.

Mr. Killmer questioned how FAR percentages would be calculated. Ms. Frederick responded that the dimensions would be hand-calculated. Mr. Killmer stated that the Planning Commission needs to decide if they should move forward with proposing and recommending to the Town Council that Floor Area Ratio regulations be included in the Town Code. Mr. Peterson acknowledged that the Planning Commission should respond to the concern of the public and allow the Council to determine what should be done. Mr. Gaughan questioned if it would be an unreasonable limitation if it were proposed to have a FAR regulation of (0 .7). Ms. Frederick stated that it would be achievable to propose at FAR of (0.7). Mr. Gaughan emphasized that the Planning Commission has been trying to address the issue of extra large houses in various way, and he feels that they need to continue trying to develop appropriate verbiage. He questioned if a FAR has a potential of limiting the vertical of footprints. Ms. Frederick explained that it reduces the size of the footprint. Mr. Gaughan asked if there have been litigation issues with FAR. Ms. Frederick stated that when the City of Rehoboth amended their Code to include FAR regulations, many residents were not in favor of it. Mr. Morris noted that

the Town already ready has a height regulation in the Town Zoning Code. He added that a FAR regulation needs to be established in able to keep the sizes of houses smaller. The Commission discussed the following action items that are to be accomplished by the Commissioners.

SUMMARY OF ACTION ITEMS

- Ms. Frederick working with Mr. Loppatto will determine an appropriate FAR ratio for Bethany Beach.
- Mr. Loppatto will prepare a draft a document which proposing adding FAR to the Bethany Beach Zoning Code.
- Mr. Killmer is going to meet with the officials of other coastal towns to see what they would recommend or what they would change about their FAR regulations. He will provide this information at a future meeting.
- Mr. Killmer will propose the recommendation to include FAR in the Code to the Town Council.

ADJOURN

Mr. Peterson made a motion to adjourn the meeting. Seconded by Mr. Gaughan, the motion was unanimously approved.

The meeting was adjourned at 10:15 a.m.

Respectfully Submitted:

Lindsey Good, Admin. Secretary